

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Oleg NAIGERTSIK : Confirmation No. 2102
U.S. Patent Application No. 10/566,369 : Group Art Unit: 1794
Filed: January 30, 2006 : Examiner: TRAN, Thao T

For: MICROCAPSULES LOADED WITH ACTIVE INGREDIENTS AND A METHOD FOR
THEIR PREPARATION

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

By Official Action mailed July 24, 2009, the Examiner made restriction under PCT Rule 13.1 to one of the following inventions:

- I. **Claims 1, 9, 24, 29, 33, drawn to a microcapsule and a composition containing the same; and**
- II. **Claims 40-43, 45, 47, drawn to a process of preparing microcapsules.**

In response to the restriction requirement dated July 24, 2009, Applicants provisionally elect the subject matter of Group I (claims 1, 9, 24, 29 and 33) as indicated by the Examiner, drawn to a microcapsule and a composition containing the same, and furthermore elect species (a), as defined in claims 1, 9, 24 and 29, with traverse. At least the following claims embrace the elected species: claims 29-32.

Regarding the restriction between groups I & II, the Examiner urged that "Group II requires a weight ratio of the precursors to the core material to be from 5/95 to 25/75 that is not required by Group I." Office action, para. 2. The examiner is respectfully asked to note that claim 40 (cf. Group II) recites *obtaining microcapsules having above 95% w/w of said core material* and claim 1 (cf. Group I) recites *wherein the concentration of the core material based total weight of the microcapsules is above 95% w/w*. After reconsidering each claim as a whole and especially the emphasized language, the Examiner is asked to withdraw the restriction.

Regarding the elected species, the Examiner urges that the species of type (a) and the species of type (b) lack unity of invention, because "Species (b) is directed to a suspension substantially free of colloidal silica, which species (a) does not." Office action, para. 5. The Examiner is respectfully asked to reconsider his preliminary interpretation of claims 29 & 33. In any case, it is respectfully submitted that these species are defined by claims 29 & 33, which depend from claim 1 directed to a *microcapsule*. And each species (a)-(b) stands in a combination/subcombination relationship, e.g., with the *microcapsule* of claim 1. Since, according to the administrative instructions, "no problem arises in the case of a combination/subcombination situation where the subcombination claim avoids the prior art and the combination claim includes all the features of the subcombination," MPEP §AI, *Administrative instruction, Annex B, Unity of invention, § (c)(i)*, the present claims should not be considered to lack unity of invention. Furthermore, the option for electing the *microcapsule* should have been made.

It is respectfully submitted that the evidence and explanation fail to establish a serious burden. In any case, the Examiner is asked to examine a reasonable number of species. Along these lines, the undersigned intends to hold the Examiner to the position taken here should an obviousness rejection be made.

Early examination on the merits is courteously solicited. The response is timely as it is filed within the shortened statutory period ending Monday, January 25, 2010, and accompanied by the governmental fee. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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Date: January 25, 2010